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Letter dated 24 March 2008 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General

I have the honour to submit the letter of Mr. Manouchehr Mottaki, Foreign Minister of the Islamic Republic of Iran, addressed to you, with regard to the Security Council resolutions against the peaceful nuclear programme of the Islamic Republic of Iran (see annex).

I would be grateful if you could have the present letter and its annex circulated as a document of the General Assembly under agenda item 87 (report of the International Atomic Energy Agency), and of the Security Council.

(*Signed*) Mohammad **Khazaee**
Ambassador
Permanent Representative

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Annex to the letter dated 24 March 2008 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General

In view of the unlawful engagement of the Security Council in the issue of the peaceful nuclear activities of the Islamic Republic of Iran and the illegal measures taken in this regard, I would like to draw your Excellency's attention to the following observations with respect to this process and the adopted Security Council resolutions, including the recent one (1803) as well as the damages inflicted on the Islamic Republic of Iran as a result of malicious steps taken by few countries during the last five years:

A) Inalienable and legal rights of the NPT States parties for the use of nuclear energy for peaceful purposes

Given the ever-increasing needs of energy for its young and growing population, like any other State party to the Non-Proliferation Treaty (NPT) and in accordance with Article IV of the Treaty on the inalienable rights of the States parties for the use of nuclear energy for peaceful purposes, the Islamic Republic of Iran has planned and started activities in the filed of peaceful uses of nuclear energy since 1957. In this context, the Islamic Republic of Iran has constantly complied with its obligations under the NPT and the Statute of the International Atomic Energy Agency (IAEA) and has never had any prohibited activities; hence, its inalienable rights under the NPT should not be violated by any means.

B) Violation of international law by certain States

Irrational opposition of the United States and the EU3 to Iran's exercising of its inalienable rights to peaceful uses of nuclear technology, and their instrumental manipulation of the international institutions in order to put pressure on the Board of Governors and the Security Council to deprive the Iranian nation of its established and legal rights have constituted a situation in which international law and the Charter of the United Nations have been seriously violated.

C) Policy of cooperation and interaction with the IAEA

The United States and three European countries (EU3), by providing false and erroneous information to the IAEA [on Iran's peaceful nuclear program], led this international technical and specialized agency to unnecessarily spend its potentials and

resources to address this issue during a long period of time and, by doing so, have prevented the Agency from fulfilling its real tasks on important issues such as the prevention of actual proliferation, disarmament, and contemplating a mechanism to effectively verify the nuclear activities of the non-parties to the NPT, particularly the Zionist regime that is continuing to develop nuclear weapons in the region.

From the very beginning, the Islamic Republic of Iran has officially announced that there is no ambiguity in Iran's nuclear activities and its nuclear program is solely for peaceful purposes. By deciding on a policy of cooperation and interaction with the IAEA, and even going beyond its existing legal obligations in this cooperation, Iran has spared no efforts to display the maximum transparency in its activities. On 21 August 2007, Iran and the IAEA reached an understanding on the Modalities of resolution of all Outstanding Issues, which brought about a new round of cooperation between the two sides. This cooperation was aimed at the resolution of the six outstanding issues, the list of which was provided by the Agency to Iran.

Shortly after the emergence of positive results of such a cooperation, which came through the resolution of the first outstanding issue, namely the "Plutonium", those few countries started their opposition to the Work Plan (Modalities) and began to put pressure on the Agency. In spite of all these pressures and obstacles, Iran and the Agency continued their cooperation and, as a result, all six outstanding issues were declared resolved and closed in the Agency's reports of November 2007 and February 2008. The Director-General of the IAEA in his recent report announced that all six remaining issues are closed in accordance with the Work Plan, and once again stressed that there is no diversion in Iran's nuclear program and, thus, displayed the falseness and invalidity of the US allegations and EU3 accusations against Iran.

The said few countries have tried to call into question the peaceful nature of Iran's nuclear program through the introduction of ambiguities and baseless allegations concerning Iran's nuclear activities. They have unfoundedly tried to accuse Iran of concealment, non-transparency and unlawful behavior, and have even used these allegations as the basis for bringing Iran's nuclear issue to the UNITED NATIONS Security Council and adopting unwarranted and unlawful measures in this regard.

D) **Unlawful engagement of the Security Council in the Iranian peaceful nuclear program**

Involvement of the Security Council in the Iranian peaceful nuclear program is in full contravention with the organizational, Statutory and safeguards requirements governing the IAEA practices and procedures. Furthermore, the substantive and procedural legal requirements, that are necessary for engaging the Security Council in the issues raised by the Agency, have been totally ignored in this regard. Referring a country's nuclear issue to the Security Council is only possible under certain conditions as described below:

- According to paragraph C, Article XII of the IAEA Statute, determining the non-compliance (diversion towards military purposes) is the essential pre-condition for referring an issue to the Security Council. This task, according to the same paragraph, is entrusted to the IAEA inspectors who should report it to the Board of Governors through the IAEA's Director General. There has never been any reference in the Agency's reports to any non-compliance by Iran or any diversion in its peaceful nuclear activities. More importantly, the IAEA Director General has repeatedly stressed that there has been no diversion of the declared nuclear materials and activities in the Islamic Republic of Iran. This conclusion has been once again reiterated in the very latest report of the IAEA Director General.[1]

- Furthermore, according to article 19 of the Safeguards Agreement between Iran and the IAEA, dated 15 May 1974[2], any referral of the issue by the Agency to the Security Council in accordance with Paragraph C, Article XII of the Statute of the IAEA, could only be possible "if the Board, upon examination of relevant information reported to it by the Director General, finds that the Agency is not able to verify that there has been no diversion of nuclear material required to be safeguarded under this Agreement, to nuclear weapons or other nuclear explosive devices". It is worth mentioning in this regard that the IAEA Director General has constantly stated in all his reports that the Agency has been able to verify that the declared nuclear materials and activities in Iran have not been diverted

[1]. GOV/2008/4, 22 February 2008 .
[2]. INFCIRC/214.

towards military purposes, and that they have remained absolutely under peaceful use.

- Also the nuclear activities of a country may be reported by the IAEA to the Council in cases where a threat against international peace and security is involved and, consequently, according to Paragraph b (4), Article III of the IAEA's Statute, the Agency would notify the Security Council in this regard. It is noteworthy that contrary to the baseless allegations made by those few States- allegations that have worked as the basis for referring the Iranian nuclear program to the Security Council- none of the IAEA Director General's reports have ever described Iran's nuclear activities as a threat to international peace and security. Rather, they have expressly declared that such activities are peaceful, and that there is no diversion of nuclear materials and activities in Iran.

E) Contradiction of the Security Council resolutions with the Charter of the United Nations and the international law

For the purpose of placing on record and seeking corrective measures, I wish to inform you [in this part of the letter] of my observations with respect to the allegations made against my country and the measures taken through the Security Council resolutions in contradiction to the Charter of the United Nations and in violation of the peremptory norms of international law.

Before dealing with such observations with respect to the said resolutions, in particular the last one, I find it necessary to stress that the engagement of the Security Council in this issue and also the resolutions adopted in this regard have been unlawful. The recent resolution by the Council has been adopted in a situation where the outstanding questions have been completely resolved in accordance with the Work Plan, and the Council not only has paid no attention to this important development, but has acted against it. With regard to the Security Council resolutions against Iran's peaceful nuclear program, including the latest one (1803), I wish to raise the following observations, among others:

1. The United States and the EU3, by putting pressure on, and instrumental exploitation of, the Security Council, brought about a situation in which some measures have been adopted in contradiction to Articles 1, 2 and 24 of the Charter of the United

Nations. Iran's peaceful nuclear program has never posed any threat to international peace and security and Iran has not violated its obligations according to the Non-Proliferation Treaty (NPT). Not only the IAEA Director General's reports have never contained any such a conclusion, but they have also confirmed the non-diversion of the declared nuclear activities and materials in Iran and their peaceful nature. Therefore, engagement of the Security Council in Iran's nuclear program is clearly contrary to the Charter of the United Nations. The Security Council has never determined Iran's Nuclear Program as a threat to international peace and security under Article 39 of the Charter of the United Nations and, thus, it could not adopt any measures against the Islamic Republic of Iran under Chapter VII of the Charter of the United Nations. Moreover, the Security Council, before resorting to the measures stipulated in Articles 40 and 41 of the Charter of the United Nations must have exhausted all required procedures under Chapter VI of the Charter of the United Nations. Regrettably, with regard to Iran's issue, the Council has acted in contradiction of these requirements.

2. In the said Security Council resolutions it is claimed that the aim of the Council is to strengthen the authority of the IAEA. This claim is not genuine, since for this statement to have any validity, at least, the Council should have acted within the framework of the Agency's regulations and the NPT. The Council, in taking unlawful actions against Iran's peaceful nuclear program, has gone beyond the legal requirements of the NPT, the IAEA Statute and the Safeguards Agreement. While the IAEA Board of Governors has itself emphasized on the "voluntary and not legally binding" nature of most of its requests for Confidence Building Measures (CBMs), the Security Council that claims to be supporting the authority of the Agency, has acted in contradiction to the Board of Governors and has considered these CBMs as Iran's obligations. Making "voluntary measures a mandatory requirement" - as it was mentioned in a letter dated 16 March 2006 from the then British Political Director (UK current Permanent Representative to the United Nations) to his American, French and German counterparts - through instrumental use of the Council, has been from the outset for narrow political objectives.

3. The right of the people of Iran to peaceful uses of nuclear technology is a clear example of the realization of "the right to development", "right to natural resources" and "right to self-determination". Such rights are among the fundamental rights of nations and their breach entails international responsibility for those who have violated them vis-à-vis the nation whose rights have been violated and also towards the international community as a whole. Nations right to the peaceful uses of nuclear

energy has been expressly recognized in the Non-Proliferation Treaty. Any action by States or the international organizations to limit such rights constitutes a violation of the fundamental principles of international law including, *inter alia,* non-interference in internal affairs of other States. I wish to emphasize that in the Final Document of the Sixth NPT Review Conference, all State parties to the Treaty confirmed "that each country's choices and decisions in the field of peaceful uses of nuclear energy should be respected without jeopardizing its policies or international cooperation agreements and arrangements for peaceful uses of nuclear energy and its fuel-cycle policies". Therefore, the Security Council's actions against Iran are in clear contradiction with the NPT principles and the Agency's Statute.

4. The Security Council, as a United Nations organ created by Member States, is subject to legal requirements, and is obliged to comply with the same international normative rules that the Member States are bound to. The Council shall observe all international norms, in particular the Charter of the United Nations and the peremptory norms of international law, in the process of its decision making and in its taking actions. Needless to say that any measure adopted in contradiction to such rules and principles will be void of any legally binding effects. As the International Criminal Tribunal for former Yugoslavia (ICTY) has stated in one of its judgments "in any case, neither the text nor the spirit of the Charter conceives the Security Council as *legibus solutus* (unbound by law)." [3] Likewise, as the International Court of Justice has held in its 1971 advisory opinion, the Member States are required to comply with Security Council decisions only if they are in accordance with the Charter of the United Nations.

5. In light of the Security Council's declared purposes in the said resolutions on the one side, and the resolution of all outstanding issues related to the nuclear program of the Islamic Republic of Iran in accordance with the Work Plan, on the other, it was logically expected that the Security Council would take into consideration the IAEA Director General's findings and conclusions.

[In the following paragraphs certain specific observations are elaborated with regard to the preambular and operative paragraphs of the latest Council resolution, namely resolution 1803:]

[3] . Prosecutor v. Dusko Tadic a/k/a "dule", Decision On The Defence Motion For Interlocutory Appeal On Jurisdiction, ICTY, Case IT-94-1, 2 October 1995, Para. 28.

6. Second preambular paragraph: While in this paragraph the Security Council has itself referred to Article IV of the NPT, at the same time it violates, by its decisions, the basic rights of a State party to the Treaty. This is in contravention with the purposes and principles of the Charter of the United Nations, according to which the contractual (treaty) obligations should be respected. In the said paragraph, these countries (the co-sponsors) have reiterated their commitment to the NPT; yet, they are in practice in gross violation of Articles I, IV and VI of the same Treaty. There are numerous examples of the violation of the NPT by the said countries. The United States is producing Mini Nukes; the United Kingdom is developing its nuclear arsenals through implementation of Trident Project; and France, in addition to its previous assistance to the production of nuclear weapons by the Zionist regime, has threatened to use nuclear weapons against non- nuclear weapon States parties to the NPT.

7. Third preambular paragraph: In contravention of the clear obligation of the nuclear weapon States under Article I of the NPT, these States have proliferated nuclear weapons which has resulted in the emergence of new nuclear powers. Undoubtedly, the shadow of the threat of nuclear weapons will be removed through full implementation of Articles I and VI of the NPT, and the primary and main responsibility in this regard lies with the nuclear weapon States that are regrettably acting in contradiction to their responsibilities.

Iran has been the first country that initiated the idea of establishment of a nuclear weapons free zone in the Middle East in 1974, and the United Nations General Assembly has adopted a resolution on this idea every year. The Council has also ignored the fact that the main obstacle to the establishment of such a zone is the Zionist regime that has not adhered to the treaties prohibiting weapons of mass destruction, a regime that its nuclear program and unsafeguarded nuclear facilities are a threat to international peace and security. The said regime, while enjoys impunity and is supported by the United States, continues to produce and stockpile all types of weapons of mass destruction, particularly nuclear weapons.

8. Fourth preambular paragraph:

- Suspension, which has already been unsuccessfully experienced, was a provisional, voluntary and non-legally binding measure, taken by Iran for two and a half years as a confidence-building measure. The IAEA Director General has clearly declared in his oral report to the Board of Governors on 3 March

2008 that "the reason for which the nuclear issue of the Islamic Republic of Iran has been referred to the Security Council was the ambiguities related to its enrichment program in the past, and the Agency has been able to clarify the enrichment program (P.1 & P.2 centrifuges) and this issue is no longer considered outstanding". Therefore, no pretext or justification remains either for the engagement of the Security Council in this regard or any request for suspension. Furthermore, there is nothing in the NPT, the IAEA Statute and the Safeguards Agreement calling for limiting the rights enshrined therein, or for such unwarranted requests.

- As the IAEA Director General has repeatedly stressed in his reports, there are no reprocessing activities in Iran. Therefore, raising a request in the Council resolutions for the suspension of an activity that does not exist has no basis. This explicitly shows that there isn't enough knowledge in the Security Council regarding the Iranian peaceful nuclear activities, and that the IAEA Director Generals' reports have remained unattended by the Council.

- The Arak 40 MW heavy water research reactor will replace the Tehran 5 MW research reactor that is nearing the end of its life. This reactor will produce radio isotopes for medical, agricultural and industrial uses. Such projects are in full conformity with Iran's rights in accordance with the NPT and the Statute of the Agency. Moreover, these projects are carried out completely under the Comprehensive Safeguards Agreement. Thus, any request for the suspension of these activities is in contradiction of the NPT and the Statute of the Agency.

- The Islamic Republic of Iran voluntarily implemented the Additional Protocol for more than two years and a half, but in response to this positive action and other voluntary measures taken by my country, a few States referred the Iranian peaceful nuclear program to the Security Council. Against this background, naturally the implementation of these voluntary measures could not be continued. The blame in this regard should, indeed, be put on those States that referred the issue to the Security Council, and not on Iran. Based on international law of the treaties and also according to the text of the Additional Protocol, making a decision by States on the ratification and implementation of this protocol is optional and not obligatory. The non-nuclear weapon States parties to the NPT are only legally bound to accept and implement the Comprehensive Safeguards Agreement. The Islamic Republic of Iran has fully complied with its

undertakings in accordance with its Safeguards Agreement, and based on the Agency's reports, all its nuclear activities are under the supervision and monitoring of the Agency. In addition, it is noteworthy that the IAEA Director General in his latest report on 22 February 2008, has stated that the additional information that Iran has provided to the Agency is similar to the provision of information based on the Additional Protocol. It is also worth mentioning that in accordance with the official information released by the Agency, 121 states had not yet ratified the Additional Protocol as of 23 November 2007. Therefore, highlighting Iran in this regard has no logic or justification. Requiring a State to implement a treaty or any other international arrangements, while it has not expressed its consent to that treaty or arrangement, contradicts the established principles of international law of treaties. Thus, the Security Council could not oblige Iran to comply with the Additional Protocol's provisions. Undoubtedly, such an approach by the Security Council would jeopardize the well-founded and recognized principle of the law of treaties.

- Confidence building is a two-way road. The Islamic Republic of Iran has, on its part, taken several voluntary confidence building measures including, *inter alia:* signing and voluntary implementation of the Additional Protocol, voluntary suspension of its nuclear activities in the past, accepting 3000 person-day inspections of its nuclear installations and materials, submission of a formal proposal by its president at the United Nations GA for participation of other states and companies in enrichment activities inside Iran, concluding an agreement with the Agency on resolving the outstanding issues, and many other steps in this regard. It is now other States' turn to do their share of confidence buildings.

9- Fifth preambular paragraph: The Security Council should be aware that the Islamic Republic of Iran is still continuing the implementation of the code 3.1 of the Subsidiary Arrangement dated 12 February 1976. But, based on its safeguards agreement and its rights, and because of the adoption of unlawful United Nations SC resolution 1747, Iran decided to suspend the implementation of the amended version of code 3.1 of the Subsidiary Arrangement that has not yet been ratified by its parliament. It will continue this suspension pending the full implementation of the provisions of the NPT, especially those related to the inalienable rights of member states for peaceful uses of nuclear technology stipulated in Article IV of the Treaty, and until the Council ceases its interference in Iran's peaceful nuclear program issue and

returns it to the Agency. It should be noted that the Islamic Republic of Iran has implemented the amended version of code 3.1 of the Subsidiary Arrangement since 2003 with the aim of strengthening its cooperation with the Agency.

In principle, the Security Council is considered as a political-executive organ in the structure of the United Nations and shall, therefore, refrain from taking any measures on issues, or in areas, that do not fall within its purview, and must confer such issues to the relevant and competent bodies. The Security Council's prescription with respect to the modified code 3.1 is beyond the Council's mandate and, accordingly, is an obvious instance of *ultra vires*.

10- Sixth preambular paragraph: The Security Council claims to be determined to strengthen the Authority of the Agency for resolving the outstanding issues and has welcomed the agreed Work Plan between Iran and the Agency. But in contradiction to this claim, the Council has completely disregarded the results of that Work Plan which was fully implemented and its implementation resulted in the resolution and closure of all six outstanding issues. The Council has also been absolutely negligent to the Director General's request to take into account his report, and just one day after his request, the Council passed the most recent unlawful resolution. Moreover, the Council has asked Iran to complete the Work Plan, while by the resolution of all six outstanding issues and provision of necessary responses to the Agency's questions by Iran, the Work Plan is fully implemented and nothing more remains to be done in this regard. The Council has also pretended that it looks for strengthening the authority of the Agency, while practically it has interfered in technical and legal affairs that fall within the mandate of the IAEA, and has therefore eroded the credibility and authority of the Agency, rather than strengthening it.

11- Seventh preambular paragraph: The Security Council expresses its belief that suspension contributes to a diplomatic and negotiated solution. However and ironically, the measures adopted by the Council have been taken prior to examining the procedures envisaged in the Chapter VI of the Charter which are based on negotiation and mediation. The basic question to ponder is; if the Council really believes in negotiation, then, why it raises preconditions for such a negotiation? It should be noted that the Heads of States of the Non-Aligned Movement, who comprise almost two thirds of the United Nations member states, have expressly asked for the beginning of the said negotiation without any preconditions. The Security Council that claims to be

representing all member states has been fully inattentive to this request of 118 member of the Non-Aligned Movement.

12. Eighth preambular paragraph: The Council, in the first part of this paragraph, has referred to the proposed Package, while not only it has completely ignored to mention Iran's detailed response to the said Package, but even it did not wait for Iran's response when it adopted resolution 1696 in a hasty manner and only few days before Iran's response to the package was presented. The Council has merely kept on mentioning the Package in its resolutions against Iran's peaceful nuclear program, while it has always ignored Iran's response to the said Package. In the second part of this paragraph, the enjoyment of the Iranian nation of its inalienable rights that is enshrined in the NPT has been conditioned to the restoration of confidence of the international community in the exclusively peaceful nature of Iran's nuclear program. Undoubtedly, conditioning the enjoyment of a State of its contractual or treaty rights to indefinite and subjective criteria is in contradiction to the recognized rules and principles of the law of treaties. The sponsors of the resolution have not presented any reason or explanation to clarify what action or omission on the part of Iran justifies this discriminatory manner which is contrary to the NPT provisions. On the contrary, the Director General of the IAEA has repeatedly declared that there is no evidence indicating any diversion in Iran's nuclear activities towards military purposes and thus the NPT has not been violated by Iran.

13. Preambular paragraph 10: It is not appropriate for the Security Council, in line with discharging its duties in implementing the Charter of the United Nations, to invoke initiatives or mechanisms which are outside the United Nations, such as the Financial Action Task Force (FATF), on which there is no global consensus.

14- Preambular paragraph 11: The development of sensitive technologies in Iran is according to the NPT regulations and the IAEA Statute, and is for absolutely peaceful purposes. Therefore, the United Nations Security Council can not decide against this program or try to limit this inalienable right. Evidently, some developed countries, by establishing closed clubs, try to have an exclusive control over certain sensitive and important technologies that are necessary for the economic development of nations, and spare no efforts to deprive the developing countries from those technologies. These efforts have indeed proved to be futile. Regarding the missile program, as confirmed in the United Nations Secretary General's Report on "the issue of missile in all its aspects", there are no universally agreed regulations or mechanisms

with regard to missiles, and additionally, according to the Charter of the United Nations, the member states have the right to take appropriate measures to defend themselves. The missile program of the Islamic Republic of Iran is solely for defensive purposes and the United Nations Security Council can not act against the Charter regulations and deprive a member state from this important right, nor can it limit the said right. Above all, there is no relation between the missile program and the nuclear program of the Islamic Republic of Iran, and the Security Council measures in this regard well indicate the hidden political agenda that are pursued by certain permanent members of the Council.

If the aim of the United Nations Security Council resolutions has been to ensure the authority of the IAEA for the resolution of outstanding issues on Iran's peaceful nuclear program, with the recent resolution and closure of these issues and with the removal of any ambiguities in this regard according to the Work Plan and as contained in the recent report of the Director General of the Agency - which stresses for the eleventh time that there has been no diversion in Iran's nuclear program- there remains no pretexts for the United Nations Security Council to take measures in this regard and, thus, the Council should immediately take compensatory measures to remove and correct its past mistakes.

15- Preambular paragraph 12: The Security Council has talked about the risk of proliferation by the Iranian peaceful nuclear program, while all nuclear activities in Iran are carried out in accordance with the NPT provisions and under the full monitoring of the IAEA, and the Agency has, time and again, emphasized on the non-diversion of these activities towards military purposes. In this regard, it should be stressed that the requirements of the Board of Governors and the provisions of the said resolutions of the Security Council, due to their unlawfulness, are not implementable, and raising the so-called " continued failure of Iran" to comply with the said requests lacks any shred of logic or justification. If the United Nations Security Council is really concerned about the proliferation risks, it should act against the vertical proliferation of new nuclear weapons and against the emerging of military doctrines for the possible use of these weapons. It should also act against the continued existence of thousands of nuclear warheads in the arsenals of nuclear weapons States.

While the Council refers in this paragraph to its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security, it has never expressly determined in this or any other previous resolutions that Iran's

nuclear program constitutes a threat to international peace and security. The Council's power in determining a situation or dispute as a threat to international peace and security is limited to certain procedural and substantive rules, including those stipulated in the Charter of the United Nations. As the ICTY has mentioned "the determination that there exists such a threat is not a totally unfettered discretion, as it has to remain, at the very least, within the limits of the Purposes and Principles of the Charter."[4] In this respect, undoubtedly the Security Council can not and shall not determine lawful conducts or situations as a threat to international peace and security. In other words, no legitimate conduct by states shall be introduced as an instance of threat to international peace and security and *a priori* the Council can not adopt any enforcement measures in this regard. All Iranian nuclear activities are carried out in accordance with relevant international treaties, in particular the NPT and the Statute of the IAEA, and in the absence of any violation of the said treaties by Iran, the Council can not make an artificial linkage between Iran's peaceful nuclear program and international peace and security.

16. Preambular paragraph 13: Decisions made by the Security Council under Article 41 of the Charter of the United Nations entail enforcement measures against the targeted State or States. The immediate effect of such decisions is the restriction, suspension, ignoring and/or violating the rights of targeted States. Thus, they would be justified only if the Council could provide sufficient and convincing evidence proving their necessity for maintenance of or restoring international peace and security. There is no doubt that in such cases the Council bears the burden of providing proof, and in the event of failure in doing so, the Council and its members have the concurrent responsibility towards the targeted State or States for any damages caused as the result of the Security Council measures. Taking into consideration that all IAEA Director General's reports have repeatedly declared that there is no evidence or indication on any diversion of the Iranian nuclear program towards military purposes, and given the fact that all outstanding issues have been resolved and closed in the framework of the Work Plan, and in accordance with the relevant international treaties, any measure by the Council to restrict, suspend, modify, ignore or violate the rights of the Iranian nation is not legally justified, and can be brought by Iran [for compensation] before competent fora at an appropriate time . Principally, the purpose of the sanctions of the Security Council should not be punishment, revenge or other hostile actions towards the targeted States, rather, the Council should adopt such measures in order to maintain

[4] . Prosecutor v. Dusko Tadic a/k/a "dule", Decision On The Defence Motion For Interlocutory Appeal On Jurisdiction, ICTY, Case IT-94-1, 2 October 1995, Para. 29.

or restore international peace and security. Nevertheless, the sponsors of the Security Council resolutions against Iran have not elaborated that how the adopted enforcement measures against Iran and Iranian entities and individuals could lead to the maintenance of international peace and security.

17. Operative paragraph 1: As mentioned in the above sections 8 and 9, the requests of the Board of Governors and the Security Council from Iran lack any legal basis. Moreover, calling upon Iran to resolve the remaining issues is unjustifiable, since the Islamic Republic of Iran has already resolved all remaining issues within the framework of the Work Plan.

18. Operative paragraph 2: It was expected that, following the implementation of the agreements between Iran and the IAEA in the framework of the Work Plan and the resolution of all outstanding issues, the Security Council would take this development into consideration and take appropriate reactions towards it, instead of adopting a new resolution that has damaged that constructive atmosphere and has hurt the credibility of the Agency and that of the Security Council.

19. Operative paragraphs 3 and 5: Constraints and bans imposed on the free movement of Iranian nationals are inconsistent with international human rights law and, indeed, any unwarranted violation of these rights entails the concurrent responsibility of the Council and its Members. Taking into consideration the IAEA Director General's reports and the resolution of all outstanding issues in the framework of the Work Plan and the constant declarations on the part of the Agency that there is no evidence for any diversion of the Iranian nuclear program towards military purposes, the Council's measures in this regard are not justified, too. Moreover, no evidence has ever been presented to prove any role by the Iranian nationals who are listed in the annexes of the Security Council resolutions in any undeclared nuclear programmes, simply because there is not such a program in Iran. Such accusations with high gravity against Iranian Government and nationals require a high standard of proof which has never been met, and to date no evidence has been submitted by the sponsors of the resolution in this regard. On the contrary, the IAEA has repeatedly stated that there is no evidence to prove any diversion of the Iranian nuclear program towards military purposes.

20. Operative paragraph 7: Freezing, confiscation and seizure of the funds, assets and properties belonging to individuals, only because the Council has decided so,

and without any reason, is in violation of the human rights requirements with respect to due process. Depriving individuals from their rights to ownership, without presenting any evidence of any wrongdoings and in the absence of any judicial decisions rendered by the competent courts, would amount to the fragmentation of universal human rights law. The Council has never submitted any convincing evidence indicating the involvement of the targeted Iranian individuals in any military nuclear activities, and has unlawfully requested the freezing of their funds, financial assets and economic resources, a prescription which is contrary to the fundamental principles of international law.

21. Operative paragraph 8: All United Nations Member States have the freedom to enjoy their sovereign rights including the right to international trade. In light of the fact that, based on the principles and purposes of the Charter of the United Nations, the United Nations and its organs shall assist all the member States in this respect, therefore, the adopted restrictions by the Council in operative paragraph 8 of resolution 1803, and all other previous related resolutions are contrary to such sovereign rights of Iran, in particular, in a situation where all relevant IAEA Director General's reports have repeatedly declared that there is no evidence to prove any diversion of the Iranian nuclear program towards military purposes, and while all outstanding issues have been resolved and closed. Prohibiting the exportation to Iran of some goods and materials that are used by Iran in fully peaceful and lawful projects which are under the IAEA monitoring, is incompatible with international law and the Charter of the United Nations. Also, applying these sanctions against Iran's defensive missile program, that based on the Charter of the United Nations is a recognized right for all members, is clearly against the provisions of the Charter. Targeting Iran's missile program while it is claimed that the Security Council is concerned about Iran's peaceful nuclear program well indicates the political motives and the hidden agenda of the aforementioned few countries.

Moreover, the inclusion in the said resolution of a list of items developed by some exclusive clubs and closed groups does not have any international legitimacy and will not lead to the recognition of these groups and their recommendations.

22. Operative paragraph 9: Including the public commercial transactions in the scope of the Security Council's measures is an obvious instance of flagrant violation of international trade law. The Council in this paragraph, without presenting any convincing evidence to prove that any export credits, insurance guarantees and

financial credits have been ever used to contribute to any alleged illegal nuclear activities, has imposed some unlawful restrictions. Although this paragraph is drafted in a non-binding wording, however, it would *per se* negatively affect the economic and financial aspects of international commercial relations.

23. Operative paragraph 10: Given the fact that these banks and other Iranian banks do not have any connection to any non - peaceful nuclear activities (as claimed in the Security Council resolution), therefore, limiting their activities means hampering the banking and financial affairs of millions of deposit holders and customers of these banks, and shows that the measures contained in this paragraph, like other measures of the Council against Iran, are aimed at targeting ordinary people.

24. Operative paragraphs 11 and 12: While all outstanding issues with respect to Iran's peaceful nuclear program have been resolved in the framework of the Work Plan, and while the IAEA Director General has repeatedly confirmed the non-diversion of the Iranian nuclear program towards military purposes, it is not clear on what grounds the Security Council has prescribed the inspection of the cargos of the Iranian aircrafts and vessels. Moreover, the Council has not made it clear that if the inspections are done merely on baseless and unfounded pretexts, how and through what competent body, the damages inflicted on the Iranian institutions could be remedied. Certainly, the Government of the Islamic Republic of Iran reserves its right to follow the case before the competent fora, and the said countries bear the responsibility for their measures in this regard. Furthermore, this paragraph could not be considered as a basis for the inspections done according to the arrangements that do not enjoy the endorsement of the general United Nations membership, and, undoubtedly, would not legitimize them.

25. Operative paragraphs 13 and 14: In light of the above-mentioned observations on the unlawfulness of the measures taken by the Security Council against Iran's peaceful nuclear program, establishing a mechanism named 1737 Committee and calling on other countries to report to that committee is unlawful. Instead of wasting its resources and the United Nations budget on this issue, it would have been much better for the Security Council to allocate its resources and budget to the more essential and immediate issues such as the genocide and the crimes committed on a daily basis by the Zionist regime in the occupied territories of Palestine.

26. Operative paragraph 15: While the few countries that are mentioned in this paragraph express their willingness to engage in dialogue and negotiations with Iran, at

the same time and contrary to their expression of readiness for negotiations, they adopt unlawful actions against Iran in the Security Council. Putting precondition for negotiation is yet another inconsistency in the actions of these countries, which well indicates their lack of goodwill in this respect. While Iran has always been ready to negotiate about different issues, it has been the other parties to the negations that have blocked this process by putting preconditions, and by their counterproductive and destructive measures. Chapter VI of the Charter of the United Nations clearly deals with the peaceful settlement of dispute among nations, but since the real intent of the sponsors of the United Nations Security Council resolutions against Iran has not been the settlement of the dispute, and since they have been only trying to exert pressure against the Iranian nation, therefore, they have not paid any attention to the provisions of this Chapter. Hence, their expression of readiness to negotiate, while at the same time a new resolution is adopted against Iran, cannot be considered genuine.

27. Operative paragraph 17: The right of a person to have recourse to the court is a fundamental human right which is expressly recognized in the Universal Declaration of Human Rights (1948) and International Covenant on Civil and Political Rights (1966). The Security Council could in no way limit or derogate such rights. The Council's prescription in this paragraph obviously has ignored such rules as *jus cogens* and could in no way be justified. For sure, the conduct of no entity is excluded from judicial review and the Security Council's decisions and the United Nations Member States actions to implement the Council decisions are also not exempted from this general rule. The Council's prescription in this Paragraph is also clearly in contravention of the principle of accountability of the Security Council.

28. Operative paragraph 18: Ironically, the sponsors and supporters of the said United Nations Security Council resolution create obligations for the Director General of the IAEA, as an independent body, which is against the letter and sprit of the Agency's Statute and the NPT.

29. Operative paragraph 19: The United States and the sponsors of the resolution (EU3) have inserted the issue of suspension under subparagraph (a) of this paragraph, as a precondition, which is in apparent contradiction to their so-called "goodwill" for resumption of negotiations. The request for suspension has no technical or legal basis. The sponsors of the resolution, under subparagraph (b) and the so-called "return mechanism", have yet again shown their real intention. In this subparagraph, they have linked the removal of the unlawful sanctions against Iran to the Security Council's

decision or, in other words, to the decision of the possessors of the undemocratic and discriminative right of "veto" in the Security Council. To make this process even more complicated- and in yet another sign of their political motives- the sponsors of the resolution have added the need for the confirmation of the Board of Governors to this process too, while it is the Agency- which has confirmed the non- diversion of Iran's nuclear activities for several times- that must play the main and pivotal role with regard to Iran's nuclear issue. Also, under sub-paragraph (c) the wider extension of sanctions has been predicted as possible new measures of the Security Council. It is obvious that, due to contradiction of these resolutions to the Charter of the United Nations, the Islamic Republic of Iran is not obliged to implement their unlawful demands and, hence, the way offered in those resolutions is wrong and it would be better for the sponsors of the resolution to seek to correct and redress their mistakes.

30. Operative paragraph 20: By keeping this issue in the Security Council's agenda, the integrity and credibility of the sole competent technical organization on nuclear activities of all countries, namely the IAEA, has been endangered and weakened. Keeping in the Agenda of the Security Council an issue which fully belongs to the IAEA, particularly after the last report of the IAEA Director General in which all remaining issues have been declared as closed in accordance with the agreed modalities, has no justification and is merely indicating the hidden political objectives of the US and EU3.

31. Annexes: With respect to the list of banned individuals, the sponsors have actually included in the said list those who are national heroes of Iran and have defended their country by putting their lives on the line during the 8-year imposed war- the same war during which the Security Council was incapacitated and unable to take any action against the aggressor. Adding the names of the AEOI personnel and affiliated companies, which are merely involved in peaceful nuclear activities under the IAEA monitoring and in accordance with NPT and IAEA Statute, is another indication of the intention of these certain States to deprive Iran from nuclear energy for peaceful purposes.

Before concluding this part of the letter, I wish to stress that all legal arguments and reasoning raised by my Government in this letter could in no way be construed or interpreted as admitting the legality of the resolutions of the Security Council and the IAEA resolutions. Moreover, none of the above-mentioned points and observations shall be explicitly or implicitly considered as proof or circumstantial evidence to

recognize or admit the requirements mentioned in the Security Council and the IAEA resolutions. Furthermore, the Government of the Islamic Republic of Iran reserves its rights to raise and to invoke any other rights, arguments or reasoning in the future. Taking into consideration the above-mentioned points and considerations, the Government of the Islamic Republic of Iran believes that the decisions adopted by the Security Council shall be considered as *ultra vires* and inconsistent with the Charter of the United Nations. Thus, my Government does not consider the said decisions as those that are covered by article 25 of the Charter and, therefore, will not be obliged to implement them.

F) Damages Inflicted:

Since the beginning of this issue, the US and EU3 tried to use the Board of Governors and the Security Council as a tool for advancing their political intention. To this end, they committed numerous breaches of their obligations which in turn resulted in infliction of damages on the Islamic Republic of Iran. Some of the breaches and consequential damages are as follows:

1. Imposing Costs on the Agency: Unnecessary highlighting of Iran's peaceful nuclear activities led to high costs for the Agency, while the Agency is responsible for more important issues like promoting and facilitating the use of nuclear energy for peaceful purposes, implementation of Article IV of the NPT and Articles II, III, and VIII of its Statute, as well as pursuing the disarmament commitments of the nuclear weapon States and establishing a mechanism to verify the nuclear activities of non-NPT members in accordance with Article VI. With confirmation of peaceful nature of Iran's nuclear activities, there remains no doubt that engaging the Board of Governors and then the Security Council in the nuclear activities of Iran was planned to divert the Agency's attention from its main tasks and responsibilities.

2. Violation of Article IV of the NPT: According to this Article, " Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes" and " all parties to the Treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials, and scientific and technological information for the peaceful uses of nuclear energy." Unfortunately, the said few States not only failed to honor their commitments under this Article, but have also violated it. They put obstacles and limitations, in order to deny the Iranian nation

the chance to exercise its absolute right and to benefit from the fruits of technology that were obtained without any help from abroad. These few States have made their utmost efforts to close the ways to nuclear cooperation with Iran.

3. Making interruption in peaceful nuclear activities of Iran and releasing confidential information: Based on the allegations and claims of these few states, the Agency called Iran's nuclear issue a "special case" which required measures beyond the existing legal commitments of Iran. Hence, to date, more than 3000 person-day inspections of nuclear facilities of the Islamic Republic of Iran have been carried out. These wide inspections interrupted the development of various affairs of nuclear facilities. Continued presence of the inspectors in nuclear facilities has hindered the scientists and the personnel of the facilities to do their job in a tranquil environment. In accordance with Article 4 of the Safeguards Agreement between Iran and the IAEA (INFCIRC/214), the safeguards shall be implemented in a manner "to avoid undue interference in Iran's peaceful nuclear activities, and in particular in the operation of facilities". In accordance with Article 9, the visits and activities of the Agency shall be arranged "to reduce to a minimum the possible inconvenience and disturbance to the Government of Iran". But due to the erroneous information of those few countries which led to the consideration of Iran's nuclear issue as a "specific" one, measure beyond these provisions were taken and Iran fully cooperated in order to prove its statements. In this regard, certain sensitive and confidential information provided to the Agency for the fulfillment of its functions have been disclosed. The Islamic Republic of Iran in its various letters to the Agency pointed out this issue. In accordance with Articles 5 and 9 of the Safeguards Agreement between Iran and the IAEA, "the Agency shall take every precaution to protect commercial and industrial secrets and other confidential information coming to its knowledge in the implementation of this Agreement." If these few countries had allowed the Agency to fulfill its tasks in a normal manner free from their interference, and had not put pressures on the Agency, we would not have been witness to certain problems. These countries presented their political evaluations before the results of the Agency's verification were released, and therefore poisoned the atmosphere. Now after almost 5 years , every one is witness to the fact that all statements by Iran have proved to be correct and those few countries have been lying.

4. Interruption in Iran's nuclear activities: As mentioned above, one of the measures taken by Iran in order to build confidence and provide transparency in its nuclear activities was the suspension of all enrichment related activities for more than

two years and a half. In this regard, some factories were closed, many people were unemployed during this time and the process of planning for meeting our energy needs was disrupted. As a result, lots of human, financial and political damages were inflicted on Iran. Now, given the fact that peaceful nature of Iran's nuclear activities has been proved, this question arises that who should compensate these huge damages?

5. Breach of Article XI of the IAEA Statute on facilitating the technical cooperation projects: The Security Council that has become unlawfully involved in Iran's nuclear activities has interrupted the technical cooperation of the Agency with Iran while the *raison d'etre* of the Agency is to help the Member States in this field. According to Article XI of the Agency's Statute "Any member or group of members of the Agency desiring to set up any project for research on, or development or practical application of, atomic energy for peaceful purposes may request the assistance of the Agency in securing special fissionable and other materials, services, equipment, and facilities necessary for this purpose" and " the Agency may also assist any member or group of members to make arrangements to secure necessary financing from outside sources to carry out such projects.". These few countries have damaged the prestige of the Agency by their actions. It goes without saying that the afore-mentioned measure not only breach the Agency's Statue, but also unilateral and destructive actions and imposing sanctions against the Islamic Republic of Iran such as unilateral measure to stop the completion of the Bushehr atomic power plant in the past and also nullifying other atomic cooperation contracts with European countries as well as impeding the cooperation of relevant companies with Iran by European countries, basically are in contrast with the establishment of the IAEA for the promotion of peaceful uses of nuclear energy, and are in violation of the provisions of both the Agency's Statue and the NPT.

6. Intellectual damages, particularly damage to reputation: The most important damage inflicted on the Islamic Republic of Iran has been the efforts made to hurt its reputation in the international arena. Enlisting the names of some Iranian scientists, authorities and companies for sanctions, has been intended by the co-sponsors to hurt the reputation of these Iranian nationals and entities. Also, these few countries have unfairly and baselessly tried to portray the peace and justice-loving people of Iran as warmonger and have endeavored to tarnish the image of Iran, and indeed all these can be proper grounds to take legal actions by my country and to seek remedy.

If the Islamic Republic of Iran has to be under such illegal pressures solely because of its peaceful nuclear activities; then what shall be the response to the frequent breaches of international obligations by the said few counties with respect to different international issues? Against this background, these countries should, as a minimum step, admit their mistakes, apologize to the great nation of Iran, correct their behavior, and above all, compensate all the damages they have inflicted on the Islamic Republic of Iran. The Islamic republic of Iran and its citizens have the right to resort to legal actions to seek redress against the sponsors of these unlawful actions. These countries should accept the responsibility for their actions and must be held accountable.

And finally, I would like to mention that our societies have been built upon the rule of law, and the desired world of peace and stability that the global community seeks to achieve also needs to be built on the foundation of justice and the rule of law. Placing one country above others and allowing it to use force is a recipe for dictatorship and anarchy. If the domination of power replaces the domination of law, especially in the light of disparities and ongoing injustices in the world, then the international security would be the main victim of this process. Multilateralism is the only lasting option which can confront the main menaces that the common security of the world is facing. Unfortunately, the tendency by certain countries towards unilateral measures has grown more than ever before. If these policies remain unbridled, at the outset of the new millennium, our world would face the greatest challenges that seriously endanger the international peace and security.

The maintenance and strengthening of international peace and security requires, as a first step, our endeavor to ensure a safer world through developing equitable international rules, and through their evenhanded implementation.

Manouchehr Mottaki
Foreign Minister of the
Islamic Republic of Iran